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EXAMINER
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WEDDINGTON, KEVIN E

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1614

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Allowable Subject Matter***

Claims 5 and 6 are allowable.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is again rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for treating an infectious disease caused by a drug-resistance strain of bacteria such as *Staphylococcus aureus* with pepper, does not reasonably provide enablement for treating other infectious diseases caused by other types of drug-resistant strains of bacteria such as *Streptococcus* or *Clostridium difficile* with pepper. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention commensurate in scope with these claims.

In this regard, the application disclosure and claims have been compared per factors indicated in the decision In re Wands, 8 USPQ2d 1400 (Fed. Cir., 1988) as to undue experimentation.

The factors include:

- 1) the quantity of experimentation necessary
- 2) the amount of direction or guidance provided
- 3) the presence or absence of working examples
- 4) the nature of the invention

- 5) the state of the art
- 6) the relative skill of those in the art
- 7) the predictability of the art and
- 8) the breadth of the claims

The instant specification fails to provide guidance that would allow the skilled artisan background sufficient to practice that instant invention without resorting to undue experimentation in view of further discussion below.

Again, applicant's remarks to the In re Wands analysis is not required are not persuasive since the applicant's instant specification only shows one example for the treatment of a drug-resistance strain bacteria such as *Staph aureus* on page 15, lines 13-31. Again, there are no examples showing other drug-resistance strains of bacteria such as *Streptococcus* or *Clostridium difficile* were eradicated with pepper.

Again, the applicant must show some data or experiment results showing that the administration of pepper is effective against all and every drug-resistance bacteria known to mankind.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-22 are again rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 is rendered indefinite and vague because the applicant left out some important steps such as the active agent.

Applicant's remarks regarding claim 7 did indeed list an active agent are not persuasive since applicant's amendment dated October 19, 2009, page 10, claim 7, and did not recite the active agent.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 4 is again rejected under 35 U.S.C. 102(b) as being anticipated by Gal, Zeitschrift fuer Lebensmittel-Untersuchung und-Forschung (1964), 124(5), pp. 33-36 or Chen et al., Chinese Journal of Microbiology and Immunology, Vol. 18, No. 3, pp. 190-195 (Aug. 1985), all of record, for reasons of record as set forth in the previous Office action dated February 17, 2010 at pages 5-6 as applied to claim 4.

Again, applicant's remarks regarding the Gal reference does not teach a phytoalexin derived from pepper to treat bacterial infections are not persuasive since the word "phytoalexin" is any various antimicrobial chemical substance produced by plants to combat infection by a pathogen. Since the two prior art references teach a pepper such as paprika (red pepper) produced anti-bacterial properties, the paprika (red pepper) is considered to be a phytoalexin.

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